

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of USCOC of)
Greater Missouri, LLC for Designation as an)
Eligible Telecommunications Carrier pursuant to) Case No. TO-2005-0384
The Telecommunications Act of 1996.)

**SECOND POST-HEARING BRIEF OF INTERVENORS
SPECTRA COMMUNICATIONS GROUP, LLC d/b/a CENTURYTEL
AND CENTURYTEL OF MISSOURI, LLC**

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January 31, 2007

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COME NOW Intervenors, Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (collectively “CenturyTel”) and respectfully submit the following second post-hearing brief in the above-captioned case.

I. INTRODUCTION

To avoid unnecessary repetition, and to hopefully aid the Commission in focusing on the most salient issues now presented as a result of Applicant USCOC’s (“US Cellular’s”) August 2006 self-styled “Compliance Filing”, CenturyTel will not here reiterate or restate its earlier arguments, nor even use the format, contained in CenturyTel’s previously filed Briefs and Position Statement¹ filed on December 11, 2006.

These prior filings, along with the entire evidentiary record in this case, remain before the Commission for full consideration and an ultimate decision on the merits.

¹ CenturyTel’s Statement of Position, filed on December 11, 2006, as well as Brown Supplemental Rebuttal (Exhibit 30 HC), contains a section by section commentary illustrating how US Cellular has not complied with particular provisions of the Commission’s ETC rule. CenturyTel’s previously filed briefs contain a detailed discussion as to the overall analytical framework to be used in reviewing ETC designation requests, including references to applicable statutes and case precedent prior to the effective date of the Commission’s ETC rule..

Despite US Cellular's apparent perception to the contrary, the Commission's March 21, 2006 *Order*² did not resolve any issues, nor make *any* findings of fact or conclusions of law, in favor of US Cellular. Instead, it appears from the language of this *Order* that the Commission, based on the evidentiary record existing at that point in time, would have simply rejected US Cellular's Application if it had not instead offered US Cellular the opportunity to submit additional evidence and to strongly suggest that US Cellular would be best served by attempting to show compliance with the Commission's then proposed but now effective new ETC rule. US Cellular now argues that with its August 2006 submission it has done all that is necessary to ensure the grant of its requested ETC status by the Commission. Every other party to the case disagrees.

A. What Is Not At Issue

This case **is not** about, nor can the Commission's ultimate decision in this case lawfully be based upon:

- 1) whether wireless technology, generally, is good or bad or even a desirable or preferable alternative to traditional landline telecommunications service;
- 2) what counsel for the Small Telephone Company Group described as "USF envy"³; that is, the comparative amount of federal USF funds flowing to Missouri versus neighboring states, where statistically Missouri may comparatively rank in terms of receipt of total USF funds for wireless carriers, or even the comparative status of the current network deployment of wireless infrastructure in Missouri versus that in other states;

² *Order Directing Applicant To File Additional Information About Intended Use of High-Cost Support*, Case No. TO-2005-0384, issued March 21, 2006.

³ Tr. at 484.

- 3) current flaws in the overall USF support system, real or perceived;
- 4) unsubstantiated, negative allegations made by wireless competitors about the perceived motivations of incumbent carriers; nor
- 5) total mischaracterizations by US Cellular of the arguments made in this case by CenturyTel and the other incumbent carriers.⁴

As a matter of law, all these matters are wholly irrelevant to the Commission's ultimate decision whether to grant or to deny US Cellular's Application in this proceeding, despite any arguments to the contrary, as simple or as seductive as they first might appear to be. The Commission's decision in this, as in all contested cases, necessarily must be based solely on the competent and substantial evidence on the whole record before it. *State ex rel. Chicago, Rock Island & Pacific R.R. Co. v. Public Service Commission*, 312 S.W.2d 791, 794 (Mo. Banc 1958).

⁴ One major mischaracterization and misunderstanding of CenturyTel's position was stated by US Cellular witness Wright at hearing (Tr. 563-565). CenturyTel is NOT at all arguing that US Cellular does not need USF support in wire centers where it already serves and should not receive USF support in those wire centers where it currently does not serve. Instead, CenturyTel submits that the clear, primary purposes of USF support are to: 1) achieve urban/rural parity in terms of service options, service quality and prices for telecommunications services, pursuant to Section 254(b)(3) of the Telecommunications Act of 1996 and 4 CSR 240-3.570(2)(A)2; and 2) encourage the deployment of and investment in high quality telecommunications infrastructure in high-cost, insular, rural areas by *all* carriers. US Cellular's arguments, revised network build-out plan, and commitments to the Commission should be judged against these fundamental standards. To the extent that US Cellular's plan emphasizes or is weighted to new construction or system improvements *primarily* in urban or urban-like areas, rather than in high-cost, rural areas, it does not further these fundamental USF goals and therefore should be rejected. Moreover, the record will reflect that CenturyTel *never* has argued that US Cellular somehow should be required, as part of its initial two year plan submission, to actually deploy new infrastructure in each and every wire center within its requested ETC service area as a precondition to obtaining ETC status. Rather, US Cellular must *at least* be able to provide the Commission with *some* estimate as to when and how it intends to fulfill its infrastructure investment obligation to provide service *throughout* its ETC service area *within a reasonable time frame*, as is required by existing rules and case precedent. In this proceeding, US Cellular continues to refuse to even attempt to provide such an estimate or make any such commitment (*see, e.g.*, Tr. 524-525) and US Cellular's heavy reliance instead on *resale* arrangements for an indefinite period of time in relatively large portions of its requested ETC service area flies in the face of the purposes and goals of the Federal Telecommunications Act of 1996 ("The Act").

B. What Is At Issue

Despite the confluence of applicable state and federal law, the now rather voluminous evidentiary record, and even the more detailed “issue list” submitted by the parties, this really case boils down to, and the Commission’s decision legally must be based upon, the answers to only *two fundamental questions*:

- 1) Whether US Cellular has fully complied with all the provisions of the Commission’s new ETC rule and other applicable statutes;⁵ and
- 2) Whether US Cellular has met its burden of proof to show that granting its ETC request is in the public interest, or perhaps more specifically, whether US Cellular has provided sufficient record evidence for the Commission to first conduct its fact-specific and rigorous cost/benefit analysis, as required by applicable law, in order to next determine whether the grant of ETC status to US Cellular’s meets the minimum public interest requirements.⁶

To the extent US Cellular’s proffered evidence fails to provide the Commission with sufficient information or certainty to answer both of these questions in the affirmative, US Cellular’s ETC request should (if not must) be denied as a matter of law.

⁵ 4 CSR 240-3.570; Sections 214(e)(1) and (2) and Section 254(b)(3) of The Act . US Cellular’s counsel appears to at least agree that US Cellular must now comply with the Commission’s new ETC rule (Tr. 468).

⁶ See, *In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order*, 20 FCC Rcd 6371 (March 17, 2005) (“*ETC Designation Order*”). See also, *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (“*Virginia Cellular*”). Pursuant to these cases, the public interest analysis should be a rigorous, fact-specific exercise that includes a careful balancing of the costs with the benefits of granting a particular ETC request. The FCC expanded the public interest factors set forth in *Virginia Cellular* in its *ETC Designation Order* at paragraph 47. Moreover, because the Commission recently has granted ETC status for other wireless carriers in portions of US Cellular’s requested ETC service area, this public interest analysis necessarily must now also include consideration of whether it is in the public interest to grant ETC status to multiple competitive wireless carriers in rural, high cost wire centers already being served by an incumbent ETC (see discussion below).

CenturyTel has presented virtually uncontested evidence in this proceeding, which taken in conjunction with the evidence offered by the other parties, shows that US Cellular has failed in various respects on both counts. The Commission should not simply ignore this evidence in the vain hope that US Cellular will, one day, bring itself into full compliance.

The time has long past for the Commission to feel obligated to attempt to negotiate special terms with US Cellular or to grant US Cellular ETC status based on some yet to be determined conditions or commitments. The Commission already has given US Cellular a second bite at the apple; the Commission need not feel compelled to offer a third. As a matter of sound regulatory policy and simple fairness, CenturyTel agrees with Staff witness McKinnie that the Commission's ETC rule should be applied consistently and that all ETC applicants should be treated equally by the Commission (Tr. 776). The Commission recently applied these same two fundamental questions to the ETC applications filed by smaller, Missouri-based companies. It should now do the same here.

C. The "Sum and Substance"

The Office of the Public Counsel grasped the sum and substance of these two fundamental questions quite well, as well as echoing the Commission's concerns expressed in March 2006, when at hearing counsel stated: "...this Commission...wants to make sure...that USF dollars are used for exactly the purpose that...they're meant for and to benefit the...citizens of the state of Missouri, especially rural customers." (Tr. 475, lines 8-12). He also succinctly and correctly summed up US Cellular's overall

evidentiary showing when he observed that rather than having concrete proposals, US Cellular's proposals and build-out plans were "shifting like sand". (Tr. 474-475).⁷

As it has in prior ETC cases, the Commission necessarily must engage in a case-specific, step-by-step, section-by-section analytical process to answer these two fundamental questions. In so doing, the Commission in essence will be asking itself, based on the evidentiary record, whether it is confident that US Cellular will use all USF dollars received from its Missouri ETC certification for their intended USF purposes—and not as a substitute revenue stream for projects it would have undertaken both inside and outside Missouri in the normal course of its competitive business⁸--and how the grant of ETC status to US Cellular actually will, on balance with the costs, benefit the rural customers in those very large rural portions of US Cellular's requested ETC service area where US Cellular itself has indicated that it has no immediate or even future plans to invest in nor deploy its own wireless infrastructure.

II. THE ADDITIONAL EVIDENCE

In addition to the pre-December 2006 evidentiary record, the Commission has now received additional evidence as a result of the December 2006 hearing. Had US Cellular been successful with the arguments it made in August 2006 when it requested summary approval without further proceedings, the only additional evidence now before the Commission would be US Cellular's August 2006 new "Two-Year Network Improvement Plan" and notarized affidavit of US Cellular witness Wright (now Exhibits

⁷ The Office of the Public Counsel even took the rather unusual step in this particular proceeding of fully endorsing and adopting CenturyTel's assessment contained in its Position Statement filed on December 11, 2006 (Tr. 475).

⁸ This not only is a clear requirement of the Commission's ETC rule, it also is required by the FCC. *See*, ETC Designation Order, paragraph 21.

28-NP and 28-HC). Consistent with its March 2006 *Order*, however, the Commission has permitted the opposing parties the opportunity to pre-file and submit into evidence supplemental rebuttal testimony (now Exhibits 29-33) and to cross-examine US Cellular's witnesses at hearing. Accordingly, it also permitted US Cellular to pre-file and submit into evidence supplemental surrebuttal testimony of three witnesses and a post-hearing, late-filed map exhibit (now Exhibits 25-27 and Exhibit 34).

In terms of the latest round of pre-filed testimony, the record will reflect that the supplemental rebuttal testimony filed by the parties opposed to US Cellular's ETC request went largely unchallenged at the December hearing. This certainly was the case with respect to the pre-filed testimony and maps/schedules submitted by CenturyTel witness Brown, whose only challenge at the hearing by US Cellular was that he was not a Radio Frequency Engineer (Tr. 804-807).

On the other hand, US Cellular's Exhibits 25-28 were repeatedly challenged and contested in several key areas by the other parties at the December hearing. During that hearing, US Cellular witnesses also made a number of important and revealing admissions which belie US Cellular's contention that it is now in full compliance with the provisions of the Commission's ETC rule and other applicable statutes and that it somehow has met its burden of proof to show that granting its requested ETC Application would be in the public interest.

A. Continuing Evidentiary Deficiencies

On March 21, 2006 the Commission concluded that US Cellular had not presented sufficient evidence, specifically with respect to US Cellular's use of high-cost support, and directed US Cellular's attention to the provisions of the Commission's then

pending ETC rule should US Cellular decide to amend its Application. The Commission's ETC rule became effective on June 30, 2006, in virtually identical form as was available to US Cellular on March 21, 2006. On August 11, 2006, US Cellular submitted what it termed its "Compliance Filing", which by its own terms, appears to be carefully crafted to supposedly comply only with the Commission's March 21, 2006 Order, as opposed to show compliance with the Commission's new ETC rule then in effect. Its earlier machinations and tap dancing routine aside, US Cellular finally agreed at the December hearing that its Application and revised two-year build-out plan was subject to and should be measured against the provisions of the Commission's new ETC rule (Tr. 468).

The Commission's ETC rule, among other things, requires that an ETC applicant to make an *upfront* submission showing:

- their intended use of high-cost support;
- *detailed* descriptions of construction plans, existing tower site locations, and estimated budget amounts;
- a two-year build-out plan demonstrating *with specificity* that high-cost USF support shall be used only for USF supported purposes consistent with federal USF principles, including promotion of "urban/rural parity";⁹
- a demonstration that the two-year plan shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis *throughout* the requested Missouri ETC service area;

⁹ See, 4 CSR 240-3.570(2)(2)(A) and Section 254(b)(3) of the Federal Act.

- *detailed* maps showing the coverage area before and after improvements and existing tower site locations, and the specific geographic areas where the improvements will be made;
- the estimated amount of investment for each project to be funded by high-cost support;
- the estimated population to benefit as a result of the improvements;
- a showing as to how the proposed plans would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally otherwise incur; and
- a demonstration that a grant of the applicant's request for ETC designation within its requested ETC service area would be consistent with the public interest, convenience and necessity.

These requirements echo and supplement the minimum federal statutory requirements found in Section 214(e)(1), the urban/rural parity provisions of Section 254(b)(3), and the public interest requirements of Section 214(e)(2) as interpreted by the FCC in recent case precedent.

Against the rather clear and unambiguous language of the rule, the evidentiary record (including US Cellular's new evidence) however, reveals the following:

- US Cellular admits that the Commission's new ETC rule requires US Cellular to demonstrate that any USF support it receives shall be used to improve coverage, service quality or capacity on a wire center by wire center basis throughout its requested ETC service area and that it must demonstrate that proposed build-out plans would not occur

absent the receipt of high-cost support and that such support will be used in addition to any expenses it would normally incur (Tr. 511-512).

- US Cellular admits that its original eighteen month build-out plan, submitted under oath, contemplated construction of sixteen new cell sites which purportedly would not be built without receipt of USF support; its revised two year plan, also submitted under oath, now contemplates construction of thirty nine new cell sites which purportedly will not be built without the receipt of USF support; and that four of the cell sites listed in US Cellular's original eighteen month plan have since been constructed without USF support (Tr. 502-503).
- In light of its construction in 2005-2006 of these four new cell towers without USF support, which originally were listed as requiring USF support, US Cellular's standard response throughout this proceeding to this particular concern and similar concerns is to assure the Commission that it should be content to rely solely on an "after-the-fact" review of US Cellular's expenditures during its annual recertification review after ETC status is granted and US Cellular has received high-cost support (Tr. 470-471, 506, 570); this despite the fact that the Commission's rule by its own terms does not allow or provide for an ETC to submit its budget detail and expense information for the first time in its annual recertification review but

instead requires the submission of this information upfront at the time the ETC application is submitted (Tr. 776-777).

The Commission must examine this evidence in light of the ETC rule requirements and then properly should ask, if it had already accepted US Cellular's earlier assurance and original list of the sixteen new cell towers that purportedly would not have been constructed absent the receipt of high-cost support, would not US Cellular's change in business plans in 2005-2006 violate the representations it made under oath to the Commission and also violate the clear provisions of the Commission's rule that high-cost support only be used for USF supported purposes? Even if not, what meaningful recourse would be available to the Commission after-the fact, either then or now, if US Cellular already had received high-cost support for construction of new towers or other system improvements that turned out to be non-USF supportable projects? US Cellular suggests that this wouldn't be a problem as it would simply shift the USF dollars toward other, yet unspecified USF-supported projects that eventually would show up subsequently during the Commission's after-the-fact annual review process. The other parties take great issue and see obvious problems with US Cellular's approach, aside from the fact that this approach is not allowed in the ETC rule (Tr. 799-801).

But even if such fears and problems are somehow unfounded or otherwise ignored, further examination of the evidence reveals:

- US Cellular admits that it obviously has constructed, and will in the future construct, new facilities in Missouri without receipt of high-cost support (Tr. 512).

- That such new construction is driven by competitive pressures such as customer demand and technical issues (Tr. 512-513); US Cellular’s “capital budgets are driven by competitive pressures” (Tr. 594).
- That all areas currently served by US Cellular, including those in urban, high population, and otherwise “high value areas” are in need of network and system improvement (Tr. 592-594).
- That US Cellular already faces competitive wireless competition in all areas of its Missouri service territory (Tr. 515).
- US Cellular, however, has not provided and apparently is unable to provide the Commission with any future construction or infrastructure expansion plans, firm or even estimated, USF-supported or not supported, beyond a two year horizon (Tr. 524-525, 588-589, 590).
- US Cellular initially did not and could not at the time of hearing tell the Commission how many new towers it constructed in 2006 without the use of high-cost support (Tr. 513), but later in cross-examination, when presented by a US Cellular data request response, admitted to constructing a significant number¹⁰ of new rural cell sites since August 2005 absent high-cost support (HC Tr. 554), which obviously were driven by competitive market conditions.
- US Cellular could not provide the Commission with the amount US Cellular actually spent in 2006 to improve service quality (beyond the construction of new cell towers) within its Missouri service area (Tr.

¹⁰ The actual number has been classified as Highly Confidential by US Cellular.

514) and nothing in US Cellular's testimony provides the Commission with this information (Tr. 513-515).

- US Cellular admits that it currently neither records past expenditures or budgets for future construction or system improvement expenditures on a state-specific basis, let alone on a rural versus urban basis in Missouri, nor does it plan to do so even if granted ETC status (Tr. 513-515, 517-518, 749-752).
- That US Cellular's failure to do so makes it difficult, if not impossible for the Commission to determine now or in the future (during a compliance review) if in fact US Cellular is using USF support for its intended purposes and not as just another revenue stream to fund expenditures it otherwise would incur as part of its normal competitive business operations (*see*, hypothetical situation, Tr. 487-488; Tr. 777-778, 799-801).

The Commission must examine this evidence in light of the ETC rule requirements and then properly ask, if US Cellular does not know itself, or will not or cannot provide the Commission with the state-specific budgetary and financial information, or even a reasonable estimated benchmark as a starting point which is necessary to determine what level of network improvements and expansion expenditures otherwise would **be** made in the normal course of US Cellular's business in response to normal competitive market pressures, how is the Commission ever to determine (other than to simply "trust" US Cellular) whether US Cellular is using all its high-cost support

for proper USF purposes within the high-cost rural areas in state of Missouri and not engaging in improper revenue stream manipulation or otherwise “cooking its books”?

But even if this too can somehow be overlooked or ignored, a review of the evidence in light of the Commission’s ETC rule further reveals that:

- US Cellular apparently does not contest that 4 CSR 240-3.570(3)(A) requires the submission of *detailed* maps indicating the wireless service coverage area before and after improvements, as well as existing tower locations.¹¹
- US Cellular has submitted numerous service area and wireless signal propagation maps throughout this proceeding, up through and including late filed Exhibit 34-P.
- US Cellular agrees that the “white areas” shown on its maps indicate geographic areas and locations where US Cellular currently does not currently serve nor in the future plan to provide service via its own network¹² (Tr. 509, 510, 542-543, 708, 759-760).
- US Cellular characterizes the “white areas” indicated on its service area maps as “significant” (Tr. 469).¹³

¹¹ This information obviously is needed by the Commission in order to assess the significance and public benefit compared to the costs of an ETC applicant’s proposed two-year network improvement plan.

¹² This may be due either to lack of network facilities all together or weak or no wireless signal coverage from existing facilities.

¹³ One need not be a Radio Frequency Engineer or an expert in propagation analysis to see from the maps that even with US Cellular’s proposed system improvements the geographic areas shown in white far exceed those shown in other colors. Under the Commission’s rule it should not award ETC designation and the high cost funding that comes with it for an area where the applicant has not demonstrated a commitment to serve throughout the area within a reasonable period of time.

- US Cellular indicates that the “green areas” shown on its service area maps are intended to indicate “urban quality” or strong signal coverage (Tr. 626-627, 708), with the “red or magenta areas” somewhere in between green and white in terms of wireless signal strength (Tr. 708).
- US Cellular admits, however, that its maps have “limitations” in terms of truly determining sufficiency of coverage and actual signal strength (HC Tr. 614); that its maps are of “limited utility” in showing where there is or is not “high quality” or “urban quality” signal coverage within US Cellular’s service area (Tr. 471); and that an area appearing in green may not, in fact, actually have strong signal strength (Tr. 627)—all this despite the fact that US Cellular recently engaged in a rather significant revision of its original propagation study, which supposedly included a state-wide “drive test” and “tuning” adjustments (Tr. 601-605).
- It is uncontested that US Cellular’s maps and underlying propagation study have been completely revised and have undergone *very significant* changes between the time US Cellular made its initial submission and the time US Cellular made its August 2006 submission; US Cellular does not contest that a side by side comparison of its older maps with its newer maps reveal a significant increase in US Cellular’s wireless signal strength and wireless coverage area, using the same towers, and that this significant increase of signal strength is apparent throughout US Cellular’s *entire*

requested ETC service area and not just in certain portions (Tr. 518-519, 595, 602).

- Despite this purported expansion of US Cellular’s existing signal coverage--which in theory should expand US Cellular’s service area geographic footprint by reducing the size of the “white areas” shown on the maps--US Cellular’s revised two year plan still does not demonstrate how US Cellular will deploy within a reasonable time new infrastructure on a wire center-by-wire center basis *throughout* US Cellular’s requested ETC service area as required by the Commission’s ETC rule (Tr. 508-509), and to the contrary, shows that major portions of its requested service area will remain unserved by US Cellular’s network for an indefinite period, even with USF support..
- According to US Cellular, aside from US Cellular’s maps, US Cellular’s “Exhibit D-P, attached to US Cellular witness Johnson’s Surrebuttal Testimony (Exhibit 26 HC) is the only submission intended to show US Cellular’s compliance with section (2)(A)(3) of the Commission’s ETC rule (Tr. 636-637).
- US Cellular’s “Exhibit D-P” by its own terms purports to list three categories of wire centers which supposedly will benefit from implementation of US Cellular’s new two-year plan: those with sparse or no coverage, those with spotty coverage, and those with strong coverage; however, even a cursory comparison of US Cellular’s

Exhibit D-P with US Cellular’s own corresponding service area maps, as well as with those submitted by CenturyTel witness Brown, clearly show that several rural CenturyTel exchanges categorized by US Cellular in Exhibit D as having “sparse or no coverage or spotty coverage” (and therefore expected to show up as “white areas” on the maps), actually are colored “green/red” on the maps, thus indicating they either have been mis-categorized on US Cellular’s Exhibit D or that they are totally mis-represented on US Cellular’s maps (HC Tr. 607-614).

- US Cellular has not contested the accuracy of the service area and signal strength maps submitted by CenturyTel witness Brown, and his underlying propagation analysis (Tr. 595-601).
- US Cellular remains either wholly unable or unwilling to provide the Commission with even an estimate of *a reasonable time frame* within which it might satisfy its obligation to serve throughout its designated ETC service area (i.e. expand its network into the current “white areas”) (Tr. 510, 524-525, 618-620), as required under *Virginia Cellular* as part of the Commission’s overall public interest analysis.¹⁴
- A core principal of the universal service fund is urban/rural parity in terms of service options, service quality and price; the entire purpose of USF support to competitive companies is to have those companies

¹⁴ *Virginia Cellular*, at paragraphs 4 and 28.

construct facilities (Tr. 511) presumably to achieve such urban/rural parity.¹⁵

The Commission must examine all the maps submitted by US Cellular, and the record evidence related to what the maps do and fail to show, in light of the Commission's ETC rule requirements. It also should carefully review CenturyTel witness Brown's unchallenged Supplemental Rebuttal Testimony which explains in detail the relevance, significance, and the deficiencies of US Cellular's maps and related testimony respecting US Cellular's proposed ETC service area (Exhibit 30 HC). The Commission then should properly ask: 1) whether the maps submitted by US Cellular fully comply with the requirements and intent of the Commission's ETC rule; 2) whether the maps, which US Cellular itself admits are of "limited utility", provide the Commission with the information it needs to conduct its public interest analysis respecting the level of service before and after network improvements, the promotion of urban/rural parity, and US Cellular's obligation to use high-cost support throughout its requested ETC service area on a wire center-by-wire center basis; and 3) whether the obvious discrepancies between what is shown on US Cellular's Johnson Exhibit D and US Cellular's maps, (as well as the rather significant differences in signal strength as between the older and the newer maps) respecting the level of signal strength for several exchanges, can be somehow reasonably explained away, and if not, what does this indicate in terms of the both the reliability and evidentiary value of either?

¹⁵ See, *In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, Rural Task Force Recommendations to the Federal-State Joint Board on Universal Service, Released September 29, 2000*, at p. 14. (A primary purpose of universal service support is to promote investment in rural America's telecommunications infrastructure). A heavy reliance on resale by a competitive ETC's in order to attempt to show compliance with its obligation to provide service throughout its designated ETC service area clearly is contrary to the purpose of USF support.

III. MULTIPLE WIRELESS ETCs

CenturyTel witness Brown, in both his uncontested Rebuttal and Supplemental Rebuttal Testimony raised and discussed in detail the economics of and the problems with certifying multiple competitive wireless carriers in wire centers already served by another competitive wireless ETC and the incumbent ETC (*see, e.g.* Exhibit 30, pp. 16-17 for a summary). The Commission recently approved the competitive wireless ETC Applications of Northwest Missouri Cellular Limited Partnership (Case No. TO-2005-0466) (“NW”) and Missouri RSA No. 5 Partnership (Case No. TO-2006-0172) (“MO-5”). Portions of US Cellular’s requested ETC service area includes the same wire centers in which NW and MO-5 have been granted ETC status; wire centers which also are being served by the incumbent wireline ETC. Contrary to the allegations made by US Cellular, CenturyTel consistently has raised this issue in all recent Missouri ETC proceedings and the issue of granting ETC status to multiple competitive ETCs in the same wire centers certainly is now ripe by virtue of the Commission’s decisions in the NW and MO-5 cases.

CenturyTel has consistently argued that in comparison, the evidentiary showings in support of the grant of ETC status by NW and MO-5 was far superior to that made by US Cellular, even after the Commission gave US Cellular the opportunity to submit a revised two-year plan.

US Cellular has suggested that a recent case involving Nextel in Nebraska precludes the arguments made in this case by CenturyTel respecting multiple carriers. Assuming that US Cellular will cite to this Nebraska case in its brief for this same proposition, the case deserves brief comment. CenturyTel is not suggesting that the Commission has “unfettered discretion” to apply different standards to ETC applicants

based on when these applicants request or receive ETC status or that the rules somehow change once the first competitive wireless carrier in a wire center is granted ETC status. Quite the contrary. The issue of the impact of multiple wireless carriers should be part of the Commission's overall public interest analysis in each and every ETC application, regardless of timing of the application. The Commission in so doing must consider as between the competing carriers the comparative strengths and weakness, the level of evidentiary showings and commitments made, and the overall costs and benefits involved should the Commission grant ETC status to one or both or multiple competitive wireless carriers in rural, high-cost wire centers.

In this proceeding, therefore, the Commission needs to consider for example, in addition to the general economics and cost/benefit analysis aspects discussed by CenturyTel witness Brown, the following comparative factors as between US Cellular, NW and MO-5:

- US Cellular currently serves major urban wire centers in addition to rural, high-cost wire centers within its requested ETC service area while NW and MO-5 do not; the ability of and incentive for US Cellular to favor its urban areas at the cost of its rural areas is not present in the cases of NW and MO-5.
- US Cellular is a regional wireless ETC while NW and MO-5 operate solely within the state of Missouri; the ability of and incentive for US Cellular to favor its service areas outside the state of Missouri over its Missouri service areas is not present in the cases of NW and MO-5.

- The fact that US Cellular does not plan construction, budget, record or keep its financial documents on a state-specific basis, while both NW and MO-5 necessarily do, raises regulatory reporting and accountability concerns on its very face; this is especially troublesome given US demonstrated recent track record with respect to the construction of new towers without receiving high-cost support when originally US Cellular made representations that it required high-cost support to construct these towers.
- The deficiencies relating to the respective propagation studies and maps, and the ability and commitment demonstrated by the wireless ETC to provide service through its own network in all wire centers *throughout* its ETC service area within a reasonable period of time, are much more significant in the case of US Cellular than in the cases of NW and MO-5.
- NW and MO-5 submitted far more detailed and useful budgetary, construction, and system improvement information to the Commission as part of their initial, upfront ETC filings than did US Cellular, despite US Cellular being given more opportunity to do so.
- Unlike NW and MO-5, the FCC just recently rejected US Cellular's parent corporation's waiver request respecting E911 regulations, strongly criticized US Cellular's actions and delay in its compliance with federal E911 requirements and violations of Section 20.18(g)(1)(v) of the FCC rules, and actually referred the matter to the FCC's Enforcement Bureau. *In the Matter of Request for a Limited Waiver of*

United States Cellular Corporation, CC Docket No. 94-102, FCC 06-66,
Order released January 5, 2007 (copy attached).

Any and all of these comparative factors should be part of the Commission's overall public interest evaluation in this proceeding.

IV. CONCLUSION

The evidentiary record is clear that US Cellular:

1. Has not fully complied with all the provisions of the Commission's new ETC rule and other applicable statutes; and
2. Has not met its burden of proof to show that granting its ETC request is in the public interest, more specifically, that it has not provided sufficient record evidence for the Commission to first conduct its fact-specific and rigorous cost/benefit analysis, as required by applicable law, and then to conclude that granting US Cellular's ETC request has met the minimum public interest requirements.

If the evidentiary showing put forth in this case by US Cellular fully complies with the Commission's new ETC rule and passes the public interest test, one wonders how much lower the minimum threshold can go. For all the reasons stated herein, the Commission should deny US Cellular's ETC Application.

Respectfully submitted,

/s/ Charles Brent Stewart

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent to counsel for all parties of record in Case No. TO-2005-0384 by electronic transmission this 31st day of January, 2007.

/s/ Charles Brent Stewart
